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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/822,916	03/30/2001	Michael P. Oliver	DP-304354	9007

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EXAMINER

ROSENBERGER, RICHARD A

ART UNIT	PAPER NUMBER
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2877

DATE MAILED: 08/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	09/822,916		OLIVER, MICHAEL P.	
	Examiner		Art Unit	
	Richard A Rosenberger		2877	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 17-19 is/are allowed.
- 6) ☐ Claim(s) 1-3, 5, 7-11, 14-16 and 20 is/are rejected.
- 7) ☐ Claim(s) 4, 6, 12 and 13 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____. | 6) <input type="checkbox"/> Other: _____ |

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1. The is a missing word in line 20 of page 5. Correction is needed.
2. Claims 5 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 5 and 10 cal for "allowing cable access". Thus is unclear because there in no cable claimed and no claimed connection of such a cable to any of the structure that is claimed.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-3, 7-9, and 11, 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shoup (US 2,787,834).

In claims 1, the language "calibrating an instrumented fastener" is a non-limiting statement of intended use; no claimed structure make the device claimed specifically directed to such a use. Further, it is noted that the specimen 10 is "instumented", as there is an instrument (2) associated therewith. The specimen 10 can obviously be any longitudinally extended element to which such an instrument

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can be attached and can be mounted in a device to apply stress, including a fastener; it is known in the art and would have been obvious to measure the stress characteristics of a fastener. In the Shoup reference, there is necessarily an upper member (not shown) attached to the top of element 12. Element 12 fits over the top of the element 10, and is thus a "cap member"; having the element 12 "removably attached to the upper member" the allow replacement for either breakage or to allow for the testing of elements of different configurations would have been obvious. The upper element 12 has an opening into which an upper portion of the element 10 to be tested is received. There is a lower member (the lower element 12) which is located adjacent the cap member. The lower member has an opening formed therein (the hole into which the illustrated screw fits) and there is a removable insert (the illustrated screw) positioned in the lower member opening; the removable insert does receive the lower portion of the specimen 10 and holds it in place for the test.

As to claim 2, the cap (the upper holder 12) includes a spacer section (the neck portion illustrated at the top which extends upwardly to the upper member. As that section has a fixed length, it will provide a predetermined position of the fastener within the fixture.

As to claim 3, the details of how the upper holder, or cap member, is fastened to the upper member is not disclosed. The use of threaded members for attaching

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mechanical parts together is a well-known standard practice in the art and would have been obvious.

The opening in the cap member 12 is unthreaded (claim 7).

The opening in the lower member, which received the screw, is at least obviously threaded as the screw would normally be expected to thus engage the holder (claim 8). The "removable insert" (the screw) included a threaded outer portion (claim 11). The space in the lower element (the lower 12) which receives the element being tested is a chamber (claim 9).

The upper member and the cap member together comprise a upper section (claims 14), the lower member and insert together comprise a lower section (claim 15), and each of the two sections comprise an attachment portion (claim 16).

5. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Steblay (US 4,601,207).

See column 10, lines 3-10 of Steblay: "[t]he instrument used with the present invention is preferably calibrated by pulling sample bolts in a universal testing machine and comparing the load readings to the instrument readings." For such a calibration it is necessary that the upper and lower portions of the fastener (10) of the reference be held by the universal testing machine, and thus there is necessarily an upper assembly and a lower assembly to receive and hold an upper and lower portion of the fastener. The universal testing machine has means to produce tension

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to produce strain in the fastener that is detectable by the instrument associated with the fastener. It is at least trivially obvious that the universal testing machine provide a known controllable and predetermined tensile force rather than some random uncontrolled force.

6. The art does not appear to teach or suggest the particular structural limitations and method steps of claims 4, 6, 12, 13, and 17-19. Claims 17-19 are thus allowable, and claims 4, 6, 12 and 13 are objected to as being dependent upon unhallowed parent claims but would be allowable if rewritten in independent form including all of the limitations of their respective parent claims.

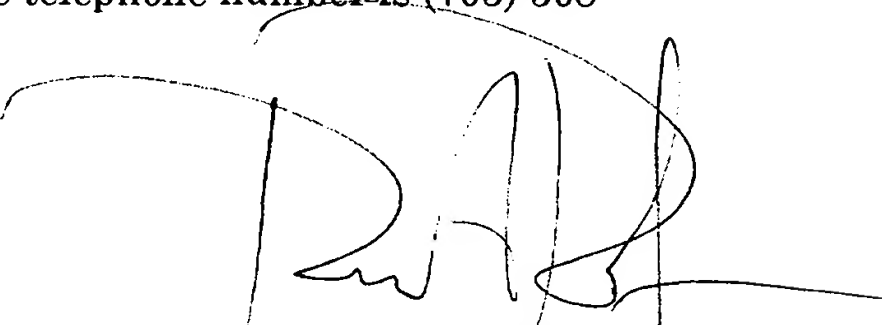
7. Haake (US 6,101,884) shows a fastener with a fiber optic stain gauge associated therewith.

8. Papers related to this application may be submitted to Group 2800 by facsimile transmission. The faxing of such papers must conform to the notice published in the Official Gazette, 1096 OG 30 (15 November 1989). The fax number is (703) 308-7722.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to R. A. Rosenberger whose telephone number is (703) 308-4804.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0956.

R. A. Rosenberger
18 August 2003



Richard A. Rosenberger
Primary Examiner